UNITED
NATIONS

CERD

International Convention on the Elimination of all Forms of Racial Discrimination

Distr.
GENERAL

CERD/SP/52
14 January 1994

ORIGINAL: ENGLISH

MEETINGS OF THE STATES PARTIES
Fifteenth meeting

LETTER DATED 14 JANUARY 1994 FROM THE PERMANENT REPRESENTATIVE OF SLOVENIA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I would be grateful if you would have the text of the enclosed letter, addressed to you, circulated as a document of the meeting of the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination.

Please accept, Your Excellency, the assurances of my highest consideration.

(Signed) Danilo TÜRK
Ambassador

Dr. Danilo Türk
Permanent Representative of Slovenia to the United Nations

New York, January 14, 1994

Excellency,

I wish to bring to your attention an issue resulting from the dissolution and extinction of former Yugoslavia.

As you will recall the Arbitration Commission of the Conference on the Former Yugoslavia, chaired by M. Robert Badinter, has concluded, in its advisory opinion No. 8 of 4 July, 1992 that the process of dissolution of the Socialist Federal Republic of Yugoslavia was complete and that Yugoslavia ceased to exist. Furthermore, the Arbitration Commission emphasized the principle of equality of all successor states of former Yugoslavia. The subsequent resolutions adopted by the Security Council and the General Assembly have confirmed the essence of that opinion. Thus the Security Council stated, in the resolution 777 (1992), "that the State formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist". Given the fundamental importance of this fact it is logical that the Security Council and the General Assembly specifically stated that the "Federal Republic of Yugoslavia (Serbia and Montenegro)" - i.e. one of the successor-States - cannot automatically continue the membership of the former Socialist Federal Republic of Yugoslavia in the UN.

The fact of extinction of former Yugoslavia is not fully reflected in the UN practice. In my letter to you and to the President of the Security Council dated 5 August 1993 (S/26246; A/48/292) I referred to those aspects of the problem which relate to the necessary action to be taken by the Security Council and the General Assembly with a view to definitive termination of the membership of the former Yugoslavia to the United Nations. In the present letter I wish to point to the need that appropriate action is taken in the area of the Secretary General's competence with respect to multilateral treaties deposited with the Secretary-General.

The advisory opinion of the Arbitration Commission of the Conference on the Former Yugoslavia and the relevant resolutions adopted by the Security Council and by the General Assembly relate to a fact of basic importance which is necessarily relevant in the context of succession with respect to international treaties, including the multilateral treaties deposited with the Secretary-General. The basic premise, namely the fact that former Yugoslavia has ceased to exist cannot be ignored or circumvented by holding the view that the Security Council and the General Assembly have not spelled out all practical consequences of

that fact. The insistence of the Security Council and the General Assembly that the "Federal Republic of Yugoslavia (Serbia and Montenegro)" cannot be considered as a holder of automatic continuity of the predecessor State has a general relevance for all organs of the UN. These organs have to refrain from acts which create an impression that automatic continuity was granted to one of successor States of former Yugoslavia. The successor States of former Yugoslavia which wish to succeed the predecessor State with respect to an international treaty are bound to notify their succession and none of them can be regarded as a holder of automatic continuity of the predecessor state which has ceased to exist. This should be duly reflected in the relevant official UN publications.

I note with regret that the recent publication entitled "Multilateral Treaties Deposited with the Secretary - General, Status as at 31 December 1992" (ST/LEG/SER.E/11), New York, 1993, refers to "Yugoslavia" as if that former state continued to exist (for example on page 100 of that publication containing the list of Parties to the International Convention on Elimination of All Forms of Racial Discrimination). This reference obscures the fact that a former State party to the Convention has ceased to exist and that none among its successor - States can be considered as a holder of automatic continuity.

I wish to request that appropriate corrections are made in the mentioned and in other relevant publications and that steps are taken to ensure that subsequent publications will accurately reflect the situation resulting from the dissolution and extinction of former Yugoslavia. The lists of States parties can include only those successor States of former Yugoslavia which have notified their succession with respect to various multilateral treaties deposited with the Secretary-General. I wish to add that this request for accurate reflection of facts resulting from extinction of former Yugoslavia relates also to all other relevant activity of the Secretary General in his capacity as the depositary of multilateral treaties.

Please accept, your excellency, the assurances of my highest consideration.

Dr. Danilo Türk
Ambassador

H.E. Dr. Boutros Boutros-Ghali
Secretary-General of the
United Nations